IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN

FLORA NICHOLAS and PAUL GAYTER, in their own right and next of friend of S.G.,	)	
Plaintiffs,	)	**Civil No. 2001-147**
v.	)	
WYNDHAM INTERNATIONAL, INC., WYNDHAM MANAGEMENT CORP., SUGAR BAY CLUB and RESORT CORP., and BRYAN HORNBY,	)	
Defendants.	)	

ATTORNEYS:

Daryl C. Barnes, Esq.
St. Croix, U.S.V.I.
For the Plaintiffs.

Douglas C. Beach, Esq.
St. Thomas, U.S.V.I.
For the Defendants Wyndham International Inc., Wyndham Management Corp., and Sugar Bay Club and Resort Corp.

James L. Hymes III, Esq.
Charles S. Russell, Jr., Esq.
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For the Defendant Bryan Hornby.

ORDER

GÓMEZ, C.J.

Before the Court is the motion of the plaintiffs, Flora Nicholas and Paul Gayter, in their own right and next of friend of S.G. (collectively, the "Plaintiffs"), to restore the above-

captioned action to the Court's docket.

Bryan Hornby ("Hornby") was convicted of unlawful sexual contact with a minor, S.G., while employed as a children's counselor at the Wyndham Sugar Bay Club and Resort in St. Thomas, U.S. Virgin Islands. Following Hornby's conviction, S.G.'s parents, Flora Nicholas and Paul Gayter, brought this action against Wyndham International, Inc.; Wyndham Management Corporation; Sugar Bay Club and Resort Corporation; Rik Blyth, the general manager of Sugar Bay Club and Resort; and Hornby (collectively, the "Defendants"), seeking damages in connection with Hornby's unlawful sexual contact with S.G.

The parties subsequently engaged in settlement discussions and agreed to a settlement (the "Settlement Agreement" or the "Agreement") at a hearing before this Court on July 15, 2005. At the hearing, the Court set July 22, 2005 as a target date for the execution of the Agreement. On July 18, 2005, the Magistrate Judge entered an order (the "Order")[1] closing this matter in

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[1] The Order provided, in pertinent part:

> ORDER CLOSING FILE AND
> DENYING ANY PENDING MOTIONS AS MOOT
>
> The Court has been advised by counsel that this action has been settled or is the process of being settled. Therefore, it is not necessary that the action remain on the Court calendar. It is hereby
> ORDERED that this file be CLOSED. The Court retains complete jurisdiction to re-open the action upon cause shown, no later than sixty (60) days from

light of the Agreement. To date, the parties have not reduced their agreement to writing. The Plaintiffs now move to reopen this matter and restore it to the Court's docket.

When an order dismissing an action pending settlement provides a timetable within which to reopen the action, the plaintiff's failure to reopen the action within the fixed period causes the order to ripen into a final order. *Berke v. Bloch*, 242 F.3d 131, 135 (3d Cir. 1990). However, "an order merely directing that a case be marked closed constitutes an administrative closing that has no legal consequence other than to remove that case from the district court's active docket." *Penn W. Assocs. v. Cohen*, 371 F.3d 118, 128 (3d Cir. 2004).

The Third Circuit has held that "[a]lthough orders with a built-in timetable may mature into a final decision, they are not entirely self executing. Such orders must still be entered into the docket before they can be considered final orders of dismissal. . . . Without such an entry, the case simply remains administratively closed." *WRS, Inc. v. Plaza Entm't, Inc.*, 402 F.3d 424, 428-29 (3d Cir. 2005). Thus, an order closing a case may mature into a final order after the lapse of a built-in

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> the date of this Order if the settlement has not been completed and further litigation is necessary.

Order, July 18, 2005.

timetable, but nevertheless requires a separate document to be considered a final order of dismissal. *Id.*

The Third Circuit has also endorsed the First Circuit's opinion in *Lehman v. Revolution Portfolio L.L.C.*, 166 F.3d 389 (1st Cir. 1999).[2] In *Lehman*, the First Circuit found that not only does an administrative closing "not bar a party from restoring the action to the Court's active calendar upon an appropriate application," but that "the power to resurrect [is not] reserved to the parties. The court, too, retains the authority to reinstate a case if it concludes that the administrative closing was improvident or if the circumstances that sparked the closing abate." *Id.* (quoting *Lehman*, 166 F.3d at 392).

The Defendants argue that "[t]his Court has no jurisdiction to consider plaintiffs' motion . . ., as this matter was closed, settled and dismissed with prejudice . . . ." (Wyndham Defs.'

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[2] The Third Circuit remarked in *Penn W. Assocs.*:

> *Lehman* presents a reasoned explication of a device that, when used in correct context, enhances a district court's ability to manage its docket. We adopt that rationale and hold that an order merely directing that a case be marked closed constitutes an administrative closing that has no legal consequence other than to remove that case from the district court's active docket.

371 F.3d at 128.

Resp. in Opp'n. to Pls.' Mot. to Restore Case to Active Docket and Set a Status Conference 1.)

Here, the record reflects that the July 18, 2005 Order was entered to take this matter off the Court's calendar in light of the Settlement Agreement. The Order is captioned as an order "closing" the case, and directs that the file be "closed." The Order does not indicate that the matter was "dismissed." Furthermore, the record does not reflect that a separate dismissal order was entered. *See Caver v. City of Trenton*, 420 F.3d 243, 262 n.14 (3d Cir. 2005) (noting "the importance of clearly memorializing decisions with separate written orders"); *Domingues v. N.J. Transit*, Civ. No. 00-5723, 2006 U.S. Dist. LEXIS 76814, at *7 n.3 (D.N.J. Oct. 11, 2006) (noting that *dismissal* orders may ripen into final orders but that "an order administratively closing a case that contains a built-in timetable under which the case may be dismissed cannot itself mature into a final judgment without entry of a separate dismissal order").

Accordingly, the July 18, 2005 Order constituted an administrative closing of this matter pending execution of the Agreement. Consequently, the Court retained its authority to restore the matter to its docket in the event the Agreement was not executed.

The Court notes as well that the Magistrate Judge issued the Order while there were pending motions for summary judgment. A magistrate judge may hear and determine most nondispositive matters pending before the court.[3] Absent consent by all parties involved in the action, dispositive matters may only be resolved by a district judge. 28 U.S.C. § 636(c)(1); *see also NLRB v. Frazier*, 966 F.2d 812, 816 (3d Cir. 1992). Accordingly, to the extent the Order denied all pending motions, that portion of the Order must be vacated.

For the reasons stated above, it is hereby

ORDERED that the motion is **GRANTED**; it is further

ORDERED that this matter is restored to the Court's active docket; it is further

ORDERED that the trial of this matter shall begin promptly at **9:00 a.m. on Monday, December 3, 2007**; and it is further

ORDERED that the portion of the July 18, 2005 Order denying all pending motions as moot, is **VACATED**.

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[3] Federal Rule of Civil Procedure 72(a) provides magistrate judges with discretion to resolve nondispositive disputes. *See* Fed. R. Civ. P. 72(a); *Nicholas v. Wyndham Int'l, Inc.*, 224 F.R.D. 370, 371 (D.V.I. 2005) (citing *National Gateway Telecom, Inc. v. Aldridge*, 701 F. Supp. 1104, 1119 (D.N.J. 1988), *aff'd* 879 F.2d 858 (3d Cir. 1989)).

Dated: November 16, 2007

S_____
CURTIS V. GÓMEZ
Chief Judge

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